

#321/8pm
4-11-03
Petitioner

PTO/SB/21 (03-03)

Approved for use through 04/30/2003. OMB 0651 0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/396,530
	Filing Date	09/15/1999
	First Named Inventor	Randall A. Addington
	Art Unit	3711
	Examiner Name	W. M. Pierce
Total Number of Pages in This Submission	Attorney Docket Number	99-1002

FAX RECEIVED
MAR 17 2003

GROUP 3700

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks This is sent at the suggestion of Mr. Paul Sewell to the attention of Ms. Rollins-Cross, Director. Fax 7038729303, with all fax transmissions and Auto Fax Receipts from 09/03/2002 to the present.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual	Joel I. Rosenblatt, JIROSENBLATT, PATENT ATTORNEY
Signature	<i>Joel I. Rosenblatt</i> 03/17/03
Date	03/17/2003

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date:		03/17/2003
Typed or printed	Joel I. Rosenblatt	
Signature	<i>Joel I. Rosenblatt</i> 03/17/0003	Date 03/17/2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents

Washington, D.C. 20231

By Facsimile: 703-872-9303

Attention: Ms. Rollins-Cross, Director

Petition To Revive

I.

This Petition Is Timely Filed

1. Applicants' attorney received a Notice of Abandonment on 3/15/03, with reason given as "No reply has been received." Applicants' response on 03/17/03 is timely filed.

II.

Relief Requested And Grounds For Relief

1. Applicants filed a Notice of Appeal, Appeal Brief, Credit Card Payment Form, Petition To Recover Appeal Notice and Brief Filing Fees, Fee Transmittal Form, and Transmittal Form, in a 33 page submission, on 09/03/02, by facsimile to (703) 872-9303.

2. The Transmittal Form noted "This facsimile of the Notice of Appeal and the Appeal Brief, sent to 703 872 9303 is approved by the USPTO on its web page . . ." and was subscribed by Joel I. Rosenblatt on 09/03/03. There was no provision on the Form PTO /SB/21, approved for use through 10/31/2002, for facsimile certificate but only a Certificate Of Mailing.

3. In response to Applicants' 33 page submission, applicant received a, AUTO=REPLY

-1-

Facsimile Transmission, at 10:45 a.m. , showing a copy of Applicants' Transmittal Form and showing 33 pages were transmitted.

4. Subsequently, Applicants sent a first Request For Status on 11/29/03, a second Request For Status 01/18/03, and a Petition on 1/27/03, providing a history of the 09/03/03 filing of the Appeal, and the following 2 Requests For Status, and requesting a "statement of the status of the examiner's answer to this appeal.

5. Applicants waited for a Director's answer to the Petition and which was never received.

6. Applicants now send this Petition To Revive without fee as the Abandonment as stated in the Notice mailed 3/12/03, was the act of the U.S. Patent Office and not the fault of Applicants, who did everything reasonable to properly file the appeal and to request status.

7. Applicants believe they have fully complied with all Office Regulations and submit the attached original submission as stated above in II., 1, consisting of 33 pages, the Auto=Reply Facsimile Transmission, dated 09/03/03, showing the receipt of 33 pages including the cover Transmittal Form (1 Page), the Auto-Reply Facsimile Transmission, dated 11/29/03 for Applicants' Request For Status and the Request (2 Pages), the Auto-Reply Facsimile Transmission, dated 01/10/03 the 2nd Request For Status and the 2nd Request, and the Auto=Reply Facsimile Transmission, dated 01/27/03 for Applicants' Petition and the Petition (3 pages), and a Transmittal Form.

8. Applicants request expedited processing of this Petition as this Application is made special under Rule 102(c).

Respectfully,

Joel I. Rosenblatt

Attorney for Applicants

Registration 26,025

445 11th Ave.

Indianapolis, Florida 32903

321-727-7626; Fax: 727-8209

Email: jrosenblatt@earthlink.net

Page 001

TO:Auto-reply fax to 3217278209 COMPANY:



TO:

Fax Sender at 3217278209

Fax Information

Date Received:

Total Pages:

1/27/03 12:09:12 PM [Eastern Standard Time]
2 (including cover page)

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Kendall Advisory Nat

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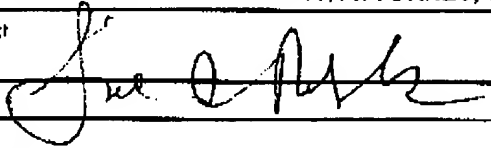
PTO/SB/21 (01-03)

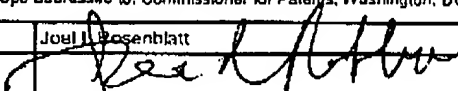
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Application Number	US/395,530
		Filing Date	9/15/99
		First Named Inventor	Randall A. Addington
		Art Unit	3711
		Examiner Name	W.A. Pierce
Total Number of Pages in This Submission	2	Attorney Docket Number	99-1002

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks This Petition is a request for Status of this application made special under Rule 102(c)		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual	Joel I. Rosenblatt	
Signature		
Date	01/27/2002	

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 01/27/2002		
Typed or printed	Joel I. Rosenblatt	
Signature		Date 01/27/2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents

Washington, D.C. 20231

By Facsimile: 703-872-9303

37 C.F.R. 1.181 Petition

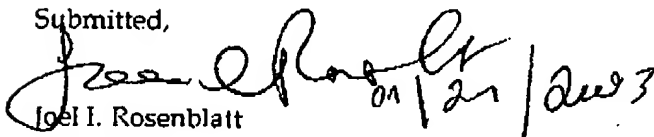
1. Applicants filed, by facsimile on 09/03/2002, a notice of appeal, an appeal brief, the requisite filing fee, and a petition for the return of these fees. The appeal brief included a notice this application was made special under Rule 102(c), by Commissioner's grant of applicant's petition. On 11/29/2002, applicant filed by facsimile, a Request for status, including within the Request that a petition to make this application special under Rule 102(c) was granted and the examiner's answer had not been received. On 01/10/2003, applicant sent by facsimile, a second Request for status, including a statement of the grant of a Rule 102(c) petition, and that no examiner's answer or answer to the Request for Status, was received to the first Request of 11/29/2002.

As this application is made special under 102(c), and 4 months have passed without an examiner's answer and no responses to applicant's request for status were received, this petition is timely filed.

2. Applicants petition to the Commissioner under Rule 1.181 (a)(3) for a statement of the status, of the examiner's answer to this appeal.

3. There is no fee sent for this petition as it is remedial to Office practice of providing status notification in response to a facsimile made request and applicants' two separate facsimile status request have received no response, to date.

Submitted,

Handwritten signature of Joel I. Rosenblatt in black ink, with the date 01/21/2003 written below it.

Joel I. Rosenblatt
Reg. 26025

Attorney for Applicants
445 11th Ave.

Indianapolis, Florida 32903

321 727 7626; Fax 321 7278209

jrosenblatt@earthlink.net

-01/10/03 12:39:59

USPTO->

3217278289 RightFAX

Page 001

TO:Auto-reply fax to 3217278209 COMPANY:

Auto-Reply Facsimile Transmission**UNITED STATES
PATENT AND
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Received
Cover
Page

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Sent By: Joel I. Rosenblatt, Patent Atto; 3217278209;

Jan 10 03 12:34;

Page 1/1

Application Number: 09/196,530

Group Art Unit .3711

Filing Date: 09/15/99

Examiner Name: William M. Pierce

Inventors: Randall A. Addington, et al.

Attorney Docket No.: 00-1002

Title: Method for Improving Bowler's Control

Assistant Commissioner of Patents
Washington, D.C. 20231

Attention: Tech 3/00 Contact Customer Service Center, 703-872-9301

2nd REQUEST FOR STATUS

This application has been granted Special Status under Rule 102(c).

A Notice of Appeal and an Appeal Brief was sent by facsimile on 09/03/2002. Applicants filed a Request For Status by facsimile on 11/29/2002. To date, Applicants' Attorney has had not received an examiner's answer or the status of this application, as requested.

Applicants, by their attorney, requests the Group Director inform Applicants' attorney of the present location of the file for this application and its current status.

Sd/-d/-d/-d/-

Joel I. Rosenblatt

Attorney for the Inventors

Registration 25,025

445 11th Ave.

Indianapolis, Florida 32903

Telephone (321) 727-7626

Facsimile (321) 727-8209

Email: jrosenblatt@earthlink.net

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01/10/03 12:39:00

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Auto-Reply Facsimile Transmission**UNITED STATES
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Page
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Sent By: Joel I. Rosenblatt, Patent Atto; 3217278209;		Jan-10-03 12:39;		Page 1/1	
Application Number: 09/396,530		Group Art Unit: 3711			
Filing Date: 09/13/99		Examiner Name: William M. Pierce			
Inventors: Randall A. Addington et al		Attorney Pocket No.: 99-1002			
Title: Method for Improving Bowler's Control					
Assistant Commissioner of Patents Washington, D.C. 20231					
Attention: Tech 3700 Center Customer Service Center; 703-872-9301					
2nd REQUEST FOR STATUS					
This application has been granted Special Status under Rule 102(c).					
A Notice of Appeal and an Appeal Brief was sent by facsimile on 09/03/2002. Applicants filed a Request For Status, by facsimile on 11/29/2002. To date, Applicants' Attorney has had not received an examiner's answer or the status of this application, as requested.					
Applicants, by their attorney, requests the Group Director inform Applicants' attorney of the present location of the file for this application and its current status.					
<div style="text-align: right;">Submitted, Joel I. Rosenblatt Attorney for the Inventors Registration No. 26,025 445 11th Ave. Indianapolis, Florida 32803 Telephone (321) 727-7826 Facsimile (321) 727-8209 Email jrosenblatt@earthlink.net</div>					
Received from < 3217278209 > at 1/10/03 12:34:40 PM [Eastern Standard Time]					

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 09/15/99

Examiner Name: William M. Pierce

Inventors: Randall A. Addington, et al.

Attorney Docket No.: 99-1002

Title: Method for Improving Bowler's Control

Assistant Commissioner of Patents
Washington, D.C. 20231

Attention: Tech 3700 Center Customer Service Center; 703-872-9301

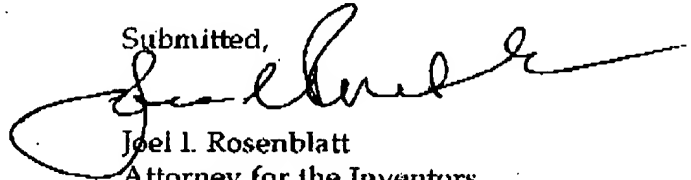
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Applicants, by their attorney, requests the Group Director inform Applicants' attorney of the present location of the file for this application and its current status.

Submitted,



Joel I. Rosenblatt
Attorney for the Inventors
Registration 26,025
445 11th Ave.
Indialantic, Florida 32903
Telephone (321) 727-7626
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11/29/02 10:32:07

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Page 001

TO:Auto-reply fax to 3217278209 COMPANY:

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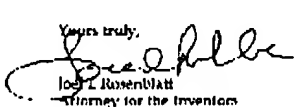
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Sent By: Joel I. Rosenblatt, Patent Atto; 3217278209;		Nov-29-02 10:32:07		Page 1/1	
Application Number: 09/376,530		Group Art Unit: 3211			
Filing Date: 09/15/99		Examiner Name: William M. Pierce			
Inventors: Randall A. Addington, et al.		Attorney Docket No.: 99-1002			
Title: Method for Improving Bowler's Control					
Assistant Commissioner of Patents Washington, D.C. 20231					
Attention: Tech 3700 Center Customer Service Center; 703-672-9901					
REQUEST FOR STATUS					
This application has been granted Special Status under Rule 102(c).					
A Notice of Appeal and an Appeal Brief was sent by facsimile on 09/03/2002. Applicants' Attorney has had not received an examiner's answer and the status of this application is requested.					
<p>Yours truly,  Joel I. Rosenblatt Attorney for the Inventors Registration 26,021 445 11th Ave. Indianapolis, Florida 32903 Telephone (321) 727-7626 Facsimile (321) 727-8209 Email: jrosenblat@earthlink.net</p>					
Received from <3217278209> at 11/29/02 10:29:31 AM [Eastern Standard Time]					

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 09/15/99

Examiner Name: William M. Pierce

Inventors: Randall A. Addington, et al.

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Title: Method for Improving Bowler's Control

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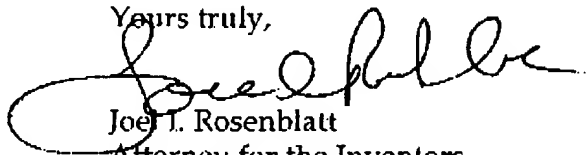
Attention: Tech 3700 Center Customer Service Center; 703-872-9301

REQUEST FOR STATUS

This application has been granted Special Statue under Rule 102(c).

A Notice of Appeal and an Appeal Brief was sent by facsimile on 09/03/2002.
Applicants' Attorney has had not received an examiner's answer and the status of this application is requested.

Yours truly,



Joel I. Rosenblatt
Attorney for the Inventors
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445 11th Ave.
Indialantic, Florida 32903
Telephone (321) 727-7626
Facsimile (321) 727-8209
Email: jirosenblatt@earthlink.net

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Page 081

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UNITED STATES
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Received
Cover
Page

State 11/29/02
Notice of Appeal
Appeal Brief
Filed 9-3-02

Sent By: Joel I. Rosenblatt, Patent Atto; 321 727 8209;		Sep-3-02 9:53;		Page 1	
<p>Approved for use through electronic mail (e-mail) by the U.S. Patent and Trademark Office (USPTO) on 10/1/01. For more information, see the USPTO's e-mail policy at http://www.uspto.gov/patent/epolicy.html.</p>					
<p>TRANSMITTAL FORM</p> <p>Be sure to fill out correspondence sheet when filed.</p> <p>Total number of pages in this transmission: 37</p>		<p>Application Number: 03308530</p> <p>Filing Date: 08/15/1999</p> <p>First Named Inventor: Harold A. Adlington</p> <p>Group Art Unit: 3711</p> <p>Examiner Name: W M Pierce</p> <p>Art Unit/USPTO Number: 38-1002</p>			
<p><input checked="" type="checkbox"/> For Transmittal Form</p> <p><input checked="" type="checkbox"/> Fee Attached</p> <p><input type="checkbox"/> Amendment or Reply</p> <p><input type="checkbox"/> After First</p> <p><input type="checkbox"/> After Substantive Examination</p> <p><input type="checkbox"/> Extension of Time Request</p> <p><input type="checkbox"/> Request for Reconsideration</p> <p><input type="checkbox"/> Request for Continued Examination</p> <p><input type="checkbox"/> Request for Withdrawal of Application</p> <p><input type="checkbox"/> Request for Withdrawal of Application</p> <p><input type="checkbox"/> Response to Mailing of Notice of Appeal</p> <p><input type="checkbox"/> Response to Mailing of Notice of Appeal</p> <p><input type="checkbox"/> Response to Mailing of Notice of Appeal</p>		<p>ENCLOSURES (check all that apply)</p> <p><input type="checkbox"/> Abstracts of Papers (for all applications)</p> <p><input type="checkbox"/> Drawings</p> <p><input type="checkbox"/> Letters to the Patent</p> <p><input type="checkbox"/> Petition</p> <p><input type="checkbox"/> Petition to Convert to a Provisional Application</p> <p><input type="checkbox"/> Order of Attorney, Agent, or Change of Correspondence Address</p> <p><input type="checkbox"/> Terminal Disclaimer</p> <p><input type="checkbox"/> Request for Return of Fee</p> <p><input type="checkbox"/> CD, Number of CD(s)</p> <p><input type="checkbox"/> Other Materials Submitted in Connection with the Application</p> <p><input type="checkbox"/> Agent's Confirmation to Office of Appeal and Intervenor's</p> <p><input checked="" type="checkbox"/> Agent's Confirmation to Office of Appeal and Intervenor's</p> <p><input type="checkbox"/> Preliminary Information</p> <p><input type="checkbox"/> Status Letter</p> <p><input checked="" type="checkbox"/> Other Enclosures (specify clearly below)</p> <p>Petition for Return of Fee</p>			
<p>Signature of Applicant, Attorney, or Agent: Joel I. Rosenblatt, Patent Attorney</p> <p>Date: 09-03-2002</p>					
<p>CERTIFICATE OF MAILING</p> <p>I hereby certify that the correspondence in being deposited with the United States Postal Service with sufficient postage for mailing.</p> <p>Typed or printed name: _____</p> <p>Signature: _____ Date: _____</p>					
<p>3700 703-812-7303</p> <p>Received from 321 727 8209 at 9/3/02 9:44:37 AM [Eastern Daylight Time]</p>					

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	Group Art Unit	3711
	Examiner Name	W.M. Pierce
	Attorney Docket Number	99-1002
Total Number of Pages in This Submission		33

ENCLOSURES (check all that apply)

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|--|---|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Assignment Papers (for an Application) | <input type="checkbox"/> After Allowance Communication to Group |
| <input checked="" type="checkbox"/> Fee Attached | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
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| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
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| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | This facsimile of the Notice of Appeal and the Appeal Brief, sent to 703-872-9303, is approved by the USPTO on its Web Page http://www.uspto.gov/emergencyalerts/faxnotice.htm
Petition for Return of Notice & Brief Fees | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Joel I. Rosenblatt, Patent Attorney
Signature	<i>Joel I. Rosenblatt</i>
Date	09-03-2002

CERTIFICATE OF MAILING

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3700 703-872-9303

Received from <3217278209> at 3/17/03 11:19:18 AM [Eastern Standard Time]

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents
Washington, D.C. 20231

Petition to Recover Appeal Notice and Brief, filing Fees

This Notice of Appeal and Appeal Brief, to which this Petition is attached, follows remand to the examiner by the Board of Appeals of appellants' first filed appeal. Appellants paid all appeal fees in connection with the Notice, Brief, and Oral Hearing. This re-appeal has been caused by ambiguities in examinwr's final rejection and answer which precluded the Board from a complete and thorough development of the issues to be considered on appeal. (See Remand to the Examiner, Appeal 2001-1382, Board of Patent Appeals, February 7, 2002 at page 4)

As this re-appeal is caused by the U.S. Patent Office and is without the fault of appellants, a) the return of the separate fees of \$160 for the Notice of Appeal and \$160 for the Appeal Brief, paid herewith and b) the waiver of the \$140 Oral Hearing fee, is requested.

As this is a petition for a justified return of fees, no petition fees is paid for this petition.


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Approved for use through 10/31/2002. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE**FEE TRANSMITTAL
for FY 2002**

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$) **320.00****Complete if Known**

Application Number	09396530
Filing Date	09/15/1999
First Named Inventor	Randall A. Addington
Examiner Name	W. M. Pierce
Group Art Unit	3711
Attorney Docket No.	99-1002

METHOD OF PAYMENT

1. ☐ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit
Account
NumberDeposit
Account
Name

- ☐ Charge Any Additional Fee Required
Under 37 CFR 1.18 and 1.17
- ☐ Applicant claims small entity status.
See 37 CFR 1.27

2. ☐ Payment Enclosed:

☐ Check ☒ Credit card ☐ Money
Order ☐ Other

FEE CALCULATION**1. BASIC FILING FEE**

Large Entity Small Entity

Fee Fee Fee Fee Description

Code (\$) Code (\$) Code (\$) Code (\$)

101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

Fee Paid

SUBTOTAL (1) (\$) **0.00****2. EXTRA CLAIM FEES**

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	
Multiple Dependent	-3** =	X	

Large Entity Small Entity

Fee Fee Fee Fee Description

Code (\$) Code (\$) Code (\$) Code (\$)

103	18	203	9	Claims in excess of 20	
102	84	202	42	Independent claims in excess of 3	
104	280	204	140	Multiple dependent claim, if not paid	
109	84	209	42	** Reissue independent claims over original patent	
110	18	210	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$) **0.00**

**or number previously paid, if greater. For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity	Small Entity	Fee Code	Fee Code	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	160.00
120	320	220	160	Filing a brief in support of an appeal	160.00
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	480	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) **320.00****SUBMITTED BY**

Name (Print/Type)

Joel I. Rosenblatt

Signature

Registration No.
(Attorney/Agent)

26025

Complete (if applicable)

Telephone

321 727 7626

Date

09-03-2002

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PTO/6B/31 (02-01)
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NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES		Docket Number (Optional) 99-1002
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Assistant Commissioner for Patents, Washington D.C. 20231" on _____		In re Application of Randall A. Addington
Signature _____ Typed or printed name _____		Application Number 09396530
		Filed 9-15-1999
		For Method for Improving Barber's
		Group Art Unit 3711
		Examiner W.M. Pierce

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b)) **\$160⁰⁰**

☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$_____

☐ A check in the amount of the fee is enclosed.

☒ Payment by credit card. Form PTO-2038 is attached.

☐ The Commissioner has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

☐ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. _____. I have enclosed a duplicate copy of this sheet.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

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I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.

☐ attorney or agent acting under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a) _____


Signature
Joel I. Rosenblatt
Typed or printed name
09-03-2002
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of _____ forms are submitted.

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#34
Appeal Brief
Nil
4/6/03

Application Number: 09/396,530

Group Art Unit: 3711

Filing Date: 9/15/99

Examiner Name: William Pierce

Inventors: Randall Addington et al.

Attorney Docket No.: 99-1002

Title: Method For Improving Bowler's Control

Assistant Commissioner of Patents
Washington, D.C. 20231

A Petition to make Special Under 37 CFR 102(c) has been granted in this Application and has been granted in parent application 09/130,905, filed 08/07/98.

Appellants Appeal Brief

- I. The Real Parties In Interest are the Applicants
- II. There are no related appeals or interferences. affected by, or having a bearing on this case.
- III. Claims 14 -30 and 4, are pending in this case. Claims 3 and 4 and 14-30 have been finally rejected. Claims 1-13 are cancelled.
- IV. There was an amendment filed after final rejection. The part of the amendment adding drawings and references thereto in the specification, has been entered. The part of the amendment adding claims 31, 32, and 33, misnumbered in the amendment as claim "31," "31," and "32," have not been entered.

V. SUMMARY OF THE INVENTION

Appeal Brief 09/396,530 fil d 9/15/99

Page 1 of 28

This invention as claimed, is a method of using a finger pad shield to protect the finger pad when bowling as known and practiced by those skilled in the art, by "lifting" the bowling ball on its release. "Lifting" the bowling ball, is a term of art, well known to those skilled in the art, describing releasing the ball by use of the middle finger(s) to rotate the underside of the ball upward, imparting spin to the ball at its release, and does not form any part of the invention, except to the extent the invention is a method of protecting the finger pad when lifting the ball upon its release. The claimed invention is the method of using a finger pad shield to protect the bowler's finger pad in the release and "lifting" of the bowling ball. as explained below.

As well known to those skilled in the art and as shown in patent 4,371,163 to Shaffer, col. 3, lines 33-65 and col. 4, lines 1-18, in releasing a bowling ball, "lift" is applied to the ball using the bowler's middle finger(s) with the thumb out of the ball, to rotate the underside of the ball upward and apply spin to the ball.

As shown in the Shaffer patent "lift" is a term of art known and understood by those skilled in the art to describe releasing the ball from the middle finger(s) and in that process, using the middle finger(s) to apply pressure to the underside of the ball to rotate the ball upward and impart spin to the ball.

"Lift" as a term of art is well known and used by those skilled in the art of bowling as shown in the Declaration of the Randall A. Addington, as one skilled in the art of bowling, reciting in Paragraph 2, therein,

I have been bowling for over 25 years, and have received numerous cash prizes in American Bowling Congress sanctioned tournaments and currently am eligible for, and in the process of receiving the American Bowling Congress "300 Ring," for at least one "300" or perfect, game I have bowled. The weight of bowling ball I currently prefer is 15 pounds.

and in Paragraph 4, thereof,

I am familiar with commonly used and accepted bowling terms and understand the word "lift" or "lifting" as used by those skilled in the art of bowling, and, for example as described in Patent 4,371,163, of Shaffer, columns 3 and 4, describing the use of the middle fingers inserted into the ball as the source of the lift to give the ball the desired roll. The middle fingers are described in 4,371,163, as rotating the underside of the ball upward as those middle fingers leave the ball at release, in an effect called "lift." In lifting the ball and as shown in 4,371,163 the thumb is described as positioned in a higher position than the middle fingers and removed from the ball. Then, the middle fingers are used to give spin to the ball at release, without use of the thumb.

(underlining added)

With this introduction, the claimed invention may be summarized as a method of protecting the bowler's finger pad when lifting a bowling ball on its release, by the inventive method of using a finger pad shield over a finger pad of a bowler, and forming a contact area there between, placing the finger pad shield in contact with the finger hole of a bowling ball and releasing the finger pad from the finger hole by applying a first force against the finger hole to lift the bowling ball, while receiving a second force from the bowling ball over the contact area and distributing the second force over said contact area to reduce the pressure over said contact area.

The word "over," is used in its ordinary accepted meaning of "all through" or "throughout." Webster's New Collegiate Dictionary G. & C. Merriam Company, Springfield, Massachusetts, 1973, page 817, definition of "over" as a preposition.

VI. ISSUES

Whether claims 3 and 4 and 14 to 30, should be rejected as anticipated by Marinese under 35 USC 102(b). There are no other issues in this appeal.

VII. Grouping of Claims

Claim 14 and claims 3 and 4 and 15 to 20, dependent from claim 14, should be grouped separately from claim 21 and claim 22 to 30, dependent on claim 21.

Claim 14 and Claim 21 each recite in the step elements of the respective claims, releasing the ball to lift the ball by applying a force from the finger pad against the ball and receiving a second force from the bowling ball against the finger pad and distributing that second force from the ball against the finger pad shield, over the contact area formed between the finger pad and the finger pad shield for reducing pressure over the contact area.

Claim 21 recites in additionally to the recitation of claim 14, using the middle finger pad in lifting and releasing the ball. This addition in the method step limitations of claim 21, relative to claim 14, changes the claimed invention by making more definite the inventive method is used in conjunction with lifting the ball using the middle finger. Examiner has followed his rejection of claims 21 to 30, by implying on page 4 of the Final Rejection (see lines 11-12), that Marinese shows lifting the ball at release. It is not clear from examiner's statements, how he is applying the "lift" he identifies as in Marinese and to what extent, if any at all, examiner is applying the "lift" he asserts is in Marinese. to claims 14 or 21.

At this time, appellants' position is the statements by examiner lack record based facts and are ambiguous and leave unclear what grounds of rejection are being applied to claims 14 and 21, and to respective dependent claims or how the elements examiner asserts he finds in Marinese are being applied to claims 14 and 21, and whether or not examiner is introducing a rejection based in "obviousness" (see Final Rejection, page 4, lines 15-16). As is not clear how examiner is applying Marinese or the facts of examiner's rejection, it is not clear that the claims are not subject to separate grounds of rejection and for that reason the patentability of claims 14 and 21 is asserted as not standing or falling together.

The burden on appellants in showing separate grouping of the claims is stated in IN RE C. STEVEN MCDANIEL, FRANK M. RAUSHEL, AND JAMES R. WILD, Slip Opinion 01-1307

United States Court of Appeals for the Federal Circuit, June 19, 2002, as follows.

Thus, to assure separate review by the Board of individual claims within each group of claims subject to a common ground of rejection, an appellant's brief to the Board must contain a clear statement for each rejection: (a) asserting that the patentability of claims within the group of claims subject to this rejection do not stand or fall together, and (b) identifying which individual claim or claims within the group are separately patentable and the reasons why the examiner's rejection should not be sustained. See 37 C.F.R. § 1.192(c)(7) (2001). If the brief fails to meet either requirement, the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.

Appellants, by the above statement and by appellants' statement in Section VIII, following, will demonstrate the ambiguity, leading to confusion, in examiner's stated grounds of rejection and why claims 14 and 21, do not stand or fall together.

Section VIII. Argument To Examiner's Rejection Of Claims 14-30 under 35 U.S.C. 102(b) By The Marinese Patent ("Marinese").

A. Burden of Proof

a) Rejections Under 35 U.S.C. 102

Anticipation under 35 U.S.C. 102(b) requires a single reference expressly or inherently describe each and every element as set forth in the claim. The identical invention must be shown in as complete detail as is contained in the claim. Manual of Patent Examining Procedure, Rev. 1, Feb 2000 Section 2131, Anticipation - Application of 35 U.S.C.

102(a)(b)(c), page 2100-54.

Anticipation is a question of fact. Rapoport v. Dement, 254 F.3d 1053, 1057, 59 USPQ2d 1215, 1218 (Fed. Cir. 2001).

(Underlining added)

35 USC 102 states appellants are entitled to a patent unless the examiner can show the invention was described in a printed publication for more than a year prior to the date of the application. The examiner has the burden of establishing appellants are not entitled to a patent.

b) Rejections Based On Inherency

A showing of Inherency requires the Examiner provide a rationale or evidence tending to show Inherency. See MPEP R3, July 1997, SECTION 2112 Requirements of Rejection Based on Inherency; Burden of Proof, . page 2100-47

In relying upon the theory of Inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). See MPEP, R3, July 1997, SECTION 2112 Requirements of Rejection Based on Inherency; Burden of Proof, page 2100-47

It is only when the prior art products are identical or substantially identical in structure or composition or are produced by identical or substantially identical processes, a prima facie case or anticipation is established. A prima facie case can be rebutted by evidence showing the prior art products do not necessarily possess the characteristic of the claimed product See MPEP, R3, July 1997, SECTION 2112 Requirements of Rejection Based on Inherency; Burden of Proof, page 2100-47.

(text underlining added)

c) Standard of Review

The standard of review of a decision by examiner rejecting claims under 35 USC 102 is stated in IN RE C. STEVEN MCDANIEL, FRANK M. RAUSHEL, AND JAMES R. WILD, Slip Opinion 01-1307 United States Court of Appeals for the Federal Circuit, June 19, 2002, immediately following.

DISCUSSION

A. Standard of Review

Our standard of review of a decision of the Board is set forth in the Administrative Procedure Act, 5 U.S.C. § 706. *Dickinson v. Zurko*, 527 U.S. 150, 154, 50 USPQ2d 1930, 1932 (1999). Under that statutory provision, we will set aside legal actions of the Board that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and set aside factual findings that are "unsupported by substantial evidence." 5 U.S.C. § 706 (2000); *In re Gartside*, 203 F.3d 1305, 1316, 53 USPQ2d 1769, 1775 (Fed. Cir. 2000).

(underlining added)

An agency's interpretation of its own regulations is normally entitled to considerable deference, and that interpretation ordinarily will be accepted unless it is plainly erroneous or inconsistent with the regulation. *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945); *Data Gen. Corp. v. Johnson*, 78 F.3d 1556, 1561 (Fed. Cir. 1996).

See *In Re. Gartside* 203 F.3d 1305 (Fed. Cir. 2000) requiring that a rejection be based on substantial evidence meaning "...such relevant evidence as a reasonable mind might accept as adequate to support a conclusion..." at 1312; and that a Patent Office decision, "must explicate its factual conclusions enabling... [the Court...] to verify readily whether those

conclusions are indeed supported by 'substantial evidence'..." at 1314),
(underlining added)

B) Examiner's grounds for rejection under 35 USC 102(b) fail to meet the Standard of Review and should be set aside and vacated

1. Examiner's stated grounds of rejection are deficient under, and fail, the Standard of Review for examination as stated above. While examiner has stated conclusions to support his rejections, Examiner has not provided any record facts in support of his conclusions, on pages 3,4 and 5 of the Final Rejection, explaining

i) where or how Marinese shows "the recited steps of claim 14, paragraphs a-c," or
ii) where or how the "apparatus of Marinese transmits the forces applied by the bowlers fingers to the finger pad and then to the bowling ball to control the release and the lift placed on the ball as called for in steps d-f, or

ii) what is the relevance to the claim limitations of examiner's statements "the apparatus of Marinese and the instant invention are being use (sic) to transmit forces from a bowlers hand to a bowling ball which is old and well known," or " steps d-f of claim 14 are old to the use of finger supports," or

iii) what statements of appellants examiner identifies as "at the bottom of page 13 through the bottom of page 15 of appellants' brief admit steps d-f of claim 14 are old to the use of finger supports," and what are the recited claim elements examiner asserts are related to these examiner asserted "admissions," or

iv) what are the "known forces that interact between the finger, the protector and the ball during delivery of the ball." and what recited claim elements are related to this examiner conclusion and what is the relevance of examiner's identified "known forces" to the recited steps of the claims, or

v) what is the relevance to the recited claim method steps of examiner's statement "a bowler is always considered to a 'maximum natural force' when delivering the a ball." or of examiner's statement "[t]he forces recited to be involved are admittedly well known in the art at the bottom of page 16 of the Brief," and what is the examiner asserted "statement," in appellants' Brief and why is that statement an admission, if at all, to any of the recited claim

elements, or

vi) where or how or why, Marinese shows and why examiner "considers" the examiner identified Marinese disclosure of the "substantially rigid material such as a suitable plastic or an appropriate metal," "meets the method step limitations of claim 3, or

vii) why or how the statement of appellants, referred to by examiner as "at the bottom of page 17 of the Brief," show the limitations of claim 3, if any at all "are present in the prior art," or

vii) or where or how Marinese discloses "distributing the force over the widest area of contact," or what is the examiner statement of appellants, referred to as at the top of page 19 of the Brief, that "admits that nothing new in the art is being claimed," or

viii) why or how Marinese inherently discloses as "rudimentary," in claim 17, "The step of 'reducing said pressure substantially within said contact area," or what statement unidentified by examiner "at the top of page 20 of the Brief," is an admission by appellants of this examiner assertion, or

ix) where or how Marinese inherently discloses "distributing the second force substantially uniform as called for in claim 18," or what statement by appellants which is referred to as at the top of page 21 of the Brief, is an admission any part of claim 18 or any other claim recitation, is, as examiner asserts "old in the prior art," or

x) where or how Marinese inherently shows "reducing the contact pressure as in claim 19," or what statement, or how that statement, of appellants, referred to by examiner as at the top of page 22, admits any recitation in claim 19 "is old in the prior art," as asserted by examiner, or

xi) where or how any recitation of claim 20, unidentified by examiner, is inherently shown by Marinese or what statement, or how that statement of appellants, referred to by examiner as at the top of page 23, admits any recitation of claim 20 "is old in the prior art," as asserted by examiner, or

xii) why or how the examiner unidentified recitations of claims 21 to 30 are "rejected for the same reasons as claims 3 and 14 -20," as asserted by examiner, or

xiii) why examiner is determining a question of obviousness and what is its relevance in a rejection based on 35 USC 102, or

xiv) what is the relevance to the express or inherent disclosure of Marinese or the recited claim steps "that one skilled in the art of bowling and viewing Marinese would have been familiar with the delivery of a bowling ball down an alley and the forces involved," or

xv) what is the source of law or regulation that takes the initial burden of examiner to prove applicant is not entitled to a patent under the strict wording of 35 USC 102, stating a "A person shall be entitled to a patent, unless . . . the invention was described in a printed publication . . .," and places it on the appellant, if any, or

xvi) what is the record facts of the alleged statement, as asserted by examiner, made by appellants that "specifically sets forth these functions in the claims are old and well known in the art, and how, if at all, do these alleged statements, if any, relate to the recited claimed elements.

2. Anticipation is a question of fact. Examiner has limited his grounds of rejection to conclusions, failing to support his conclusions with substantial evidence meaning such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and failing to explicate examiner's factual conclusions so appellant has the opportunity to rebut examiner's "facts," and the Board of Appeal is able to verify readily whether examiner's conclusions are indeed supported by "substantial evidence," as required by the Standard of Review for patent examination. Examiner's grounds of rejection fail to meet the Standard of Review and should be set aside and vacated.

3. Examiner's grounds of rejection under 35 USC 102(b) have failed to identify the recited steps in the claims which examiner asserts are shown in the Marinese patent, expressly or inherently, or identify in Marines expressly or inherently, by reference to the parts of the Marinese patent examiner relies upon as disclosing each and every respective step as set forth in the claims. Examiner has failed to show in Marinese, the identical invention of appellants in as complete detail as is contained in the claims and that failure is a failure of examiner to meet the Standard of Review.

4. Examiner has not provided appellants with an examination of the claims. Instead,

examiner has made incomplete statements of what elements of the claims are related to his rejection, what elements of Marinense show those claimed elements, leaving appellants to guess at the record based facts, if any, in his rejection and examiner's interpretation of the claims, if any.

B. Claims 14-30 and 3& 4 are not anticipated by Marinense

1. What Marinense shows

Marinense discloses a bowlers protective thumb ring. Marinense describes how his thumb ring may be utilized in a style of bowling Marinense describes as "throwing a hook," by using the "pressure exercised by the thumb. . ." col 1, lines 13-18. Marinense explains that this style of bowling will cause the thumb to become swollen, affecting the ability of the thumb to control the ball, col. 1, lines 20-35, and the thumb protector, fitted on the thumb, is made to be responsive to "adequate thumb pressure to control the ball and to enable release of the ball without frictional drag." col.1, lines 55-59.

Marinense explains, the thumb protector serves as a "cushion," to protect the thumb from pressure produced in controlling the ball, col.3. lines 21-27, that "at the moment of release of the ball, the thumb pressure is released," col. 3, lines 27-30, and the fingers are not used in the control of the ball except to prevent the ball from slipping from the hand, col. 3, lines 40-43.

2) What Marinense does not show

Marinense by limiting his discloses to a style of bowling using the thumb to exert a hooking pressure on the ball and that the fingers are not used in the release and control of the ball, does not describe or show how the thumb protector is fitted to the thumb finger pad or as claimed in claims 14 and 21, there is a contact area made between the finger pad and the thumb protector, or the use of the thumb protector with the method known to those skilled in the art, of lifting a bowling ball at its release by applying upward pressure by the middle finger(s) to rotate the ball upward with the thumb removed from, and out of, the ball, (See Section V. Summary, above), or whether the force of the bowling ball against the finger pad

shield and the finger pad is distributed over the contact area between the finger pad shield and thumb, as recited in claims 14 and 21.

As Marinese uses the thumb and thumb pressure exclusively without any assistance from the fingers, to control the ball while appellants' claimed method reciting releasing a ball to lift the ball at its release, requires a force applied to the ball from the middle finger(s) with the thumb removed and out of the bowling ball, Marinese cannot show or disclose any method of using the thumb protector as recited by appellants in Claims 14, and 21 in paragraph d, thereof as ,

d. releasing said finger pad of a bowler and said finger pad shield from said finger hole of a bowling ball by applying a first force from said finger pad of a bowler in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball, to lift said bowling ball and producing a second force in a second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield.

(underlining added)

While this method of releasing and lifting a bowling ball at its release with the thumb out of the ball, is well known to those skilled in the art, the Marinese disclosure of the use of the thumb protector expressly and inherently, excludes and teaches a bowler not to use, this well know release and lift method as recited in claim 14 and 21, with the Marinese thumb protector.

Accordingly, the claimed method of protecting a bowlers finger pad from the forces against the finger pad produced when releasing a ball and applying a force to the ball to lift the ball and distributing the force from the ball over the contact area between the finger pad and the finger pad shield, with the thumb out of the ball, cannot be disclosed in Marinese as these forces cannot be produced according to the disclosed thumb method of Marinese.

One skilled in the art know would not know how from Marinese or from any knowledge of the prior art, to use the thumb protector of Marinese to protect the fingers when releasing and lifting the ball as Marinese says don't use the fingers.

One skilled in the art would need appellants disclosure to know how to practice the method of protecting the finger pad in the release and lifting of the ball.

3) Why Marinese cannot meet the recited steps in the claims

i) Claims 14 and 21 recite, within the recitations of steps d-f, "forming a contact area made between said finger pad of a bowler and said first surface of said finger pad shield" (Para. a) and "distributing said second force, . . . from said interior surface of said finger hole of a bowling ball, against said . . . finger pad shield, over said contact area made between said finger pad of a bowler and said . . . finger pad shield, for reducing a pressure over said contact area . . ." (Para. f).

Examiner states Marinese does not show steps d-f of claims 14 and 21 and states the apparatus of Marinese transmits the forces applied by the bowlers fingers to the finger pad and then to the bowling ball to control the release and the lift placed on the ball as called for in steps d-f apparatus of Marinese and the instant invention are being used to transmit forces from a bowlers hand to a bowling ball in the same way and as is old and well known. See Final Rejection, page 3, lines 9-18. However, as shown above, Marinese does not and cannot show the recited steps or the forces produced in the claimed invention, when releasing and lifting the ball or the recited distribution of those forces over the contact area between the finger pad and finger pad shield.

Marinese cannot disclose distributing the force from the ball over the contact area of the finger pad shield and the finger pad, as claimed, because Marines discloses using the thumb to "hook" the ball using thumb "pressure," without disclosing which part of the thumb is used or how the thumb exerts pressure on the ball to control the "hook," and there is no record fact basis to support examiner's assertion (see Final Rejection, page 3, lines 9-11) "[t]he apparatus of Marinese transmits the force4s applied by the bowlers fingers to the finger pad

and then to the bowling ball to control the release and the lift placed on the ball as called for in steps d-f."

This examiner conclusion, at the core of his rejection, is based on his self knowledge without the support of any record based facts and fails the Standard of Review.

The Marinese disclosed method of bowling using the thumb without the fingers is exclusive of the recited method of releasing and lifting the ball using the fingers without the thumb and Examiner's grounds of rejection must be vacated as examiner is relying on his own judgment without the benefit of record based facts in support and has failed to meet the Standard of Review.

ii) Claim 15 set forth in the Appendix is dependent from claim 15. Examiner has restricted his grounds of rejection to the assertion a bowler is considered to always exert "a maximum natural force," and asserting the recited forces are well known and are admitted. However Examiner has failed to identify the part of claim 15 directed to distributing the force produced wherein the force applied to the ball is the "maximum natural force," and the finger pad shield is rigid for distributing the produced force over the contact area, and reciting,

applying a maximum natural force a bowler is capable of producing from said finger pad of a bowler, in a first direction . . . , against said interior surface of said finger hole of a bowling ball, and producing said second force in said second direction, from said . . . bowling ball, against said finger pad shield, and wherein said finger pad shield is rigid for distributing said second force in said second direction, . . . against said . . . finger pad shield, over said contact area made between said finger pad of a bowler and said. . . finger pad shield.

Marinese does not meet the limitations of claim 15. Examiner's limited statement of rejection of claim 15, does not reveal what elements of the recited steps in claim 15 are anticipated and does not reveal where in the Marinese patent, examiner believes those recited elements are

shown, is ambiguous as examiner has not explained how his knowledge that a bowler always is consider to exert a maximum natural force, is applied to claim 15 or how he is interpreting claim 15 and fails the Standard of Review. Examiner has merely described his self knowledge; an unacceptable substitute for record based facts.

iii) Claim 3 depends from claim 14 and recites,

supporting said finger pad finger pad shield with a support made of a rigidly deflectable material which holds said finger pad shield in a stable position relative to said support ; and transferring the force of the bowling ball from said finger pad shield to said support to producing a counter force in said support for restoring said support to said stable position.

Marinese does not show the recited elements of claim 3.

Examiner's rejection, is limited to his conclusion the disclosure of Marinese of a substantially rigid material such as suitable plastic or appropriate material, is considered to meet the limitations of claim 3. However, examiner has not shown how that disclosure is applied to claim 3, or the record facts of Marinese which support his conclusion "the limitations of claim 3 are considered met." All we have is examiner's application of a limited disclosure in Marinese of a rigid plastic material, to the recitation of claim 3, through the benefit of his self knowledge and a result not acceptable under the Standard of Review.

Examiner has not revealed how each element of claim 3 is met by record based facts in Marinese or how examiner has interpreted all of the recitations of claim 3.

Examiner has failed to show by record based facts what statement by appellants examiner asserts admits the limitations of claim 3 are old in the art, denying appellants an opportunity to rebut.

iv) In his rejection of claim 16 (see Final Rejection page 3, last two lines), Examiner tell us that "distributing the force over the widest possible area is known in Marinese and old in the art." However, we are not shown any record based facts in Marinese in support thereof or how examiner has interpreted claim 16 or applied Marinese to each of the recited elements of the claim 16, reciting,

distributing said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield over the widest area of said contact area for preventing pressure spots within said bowler's finger pad.

Examiner has failed to show by record based facts what statement by appellants examiner asserts admits the limitations of claim 16 are old in the art, denying appellants an opportunity to rebut.

v) Examiner's rejection of claim 17, stating " reducing the pressure substantially within said contact area in claim 17 is rudimentary and inherent to finger supports such as Marinese and admitted as known in the prior art . . .," lacks record based facts examiner must show in Marinese. Examiner cannot be allowed to states facts as conclusions based on his self knowledge. Examiner must show where in Marinese, by record based facts, each element of the recited claim is met. Instead, examiner has limited his grounds of rejection to his self knowledge and his rejection, unacceptable under the Standard of Review and this rejections, as in the case of all of his rejections, must be set aside and vacated.

The elements of claim 17, reciting,

distributing said second force, in said second direction from said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure substantially within said contact area made between said bowler's finger pad and said first surface of

said finger pad shield,

are not disclosed or anticipated by Marinese.

vi) Examiner's rejection of claims 18, stating "distributing the second force substantially uniformly as called for in claim 18 is inherent in Marinese and old in the art as admitted . . .," lacks record based facts examiner must show in Marinese. Examiner cannot be allowed to states facts as conclusions based on his self knowledge. Examiner must show where in Marinese, by record based facts, each element of the recited claim is met. Instead, examiner has limited his grounds of rejection to his self knowledge and his rejection, unacceptable under the Standard of Review and this rejections, as in the case of all of his rejections, must be vacated.

The elements of claim 18, reciting,

distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, substantially uniformly,

are not disclosed or anticipated by Marinese, explicitly or inherently.

vii) Examiner's rejection of claims 19, stating "reducing the contact pressure . . . is inherent in Marinese and old in the art as admitted . . ." lacks record based facts examiner must show in Marinese. Examiner cannot be allowed to states facts as conclusions based on his self knowledge. Examiner must show where in Marinese, by record based facts, each element of the recited claim is met. Instead, examiner has limited his grounds of rejection to his self knowledge and his rejection, unacceptable under the Standard of Review and this rejections, as in the case of all of his rejections, must be vacated.

The elements of claim 19, reciting,

distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure substantially within said contact area made between said bowler's finger pad and said first surface of said finger pad shield,

are not disclosed or anticipated by Marineuse, explicitly or inherently..

viii) Examiner's rejection of claim 20 is made without any stated basis in fact.

Appellants have no opportunity to rebut this rejection. As in all of examiner's rejections based on inherency, examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. Examiner has failed that standard and the Standard of Review and this rejection must be set aside and vacated

ix) Examiner has rejected claims 21-30 without providing any basis in fact from the claimed and recited elements or Marineuse, except to say, "Claims 21-30 are rejected for the reasons set forth with respect to claims 3 and 14 to 20 above. Examiner's statement fails to provide any facts for appellants to rebut, it fails the Standard of Review, and must be vacated.

ix) In the Final Rejection, page 4, lines 11-22, examiner states Marineuse suggests and again states ". . .one skilled in the art of bowling and viewing Marineuse would have been familiar with the delivery of a bowling ball down an alley and the inherent forces involved. Examiner has provided no record based facts explicitly or inherently, to support his conclusion. This ground of rejection was rebutted above and that rebuttal is applied here.

x) In regard to Examiner's statements about the Declaration of Randall A. Addington (final rejection, page 5, lines 17-19), examiner has not shown any record based facts in support of conclusion "it was subjective in its interpretation and failed to set forth facts. A part

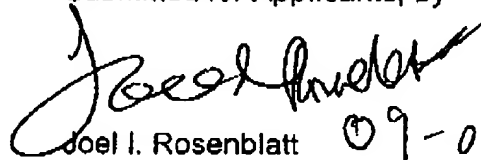
but not all of the Addington Declaration related to this appeal has been reproduced for the record by appellant. Examiner has not provided any facts explaining his conclusions or for appellants to rebut his conclusions, and this statement by Examiner, fails the Standard of Review.

xi) In regard to examiner's statement "appellant has not shown that the prior art element does not perform the functions specified in the claims," that is an ultimate conclusion of law for this appeal and reserved for the Board. It is for examiner to show by record facts, the prior art does perform the claimed functions.

xii) Examiners statement the "...Brief specifically sets forth that these functions in the claims are old and well know," is missing essential record facts of what statements were made, what functions in the claims are involved and why or how, these unidentified statements are related to examiners rejections.

PART IX, CONTAINING THE CLAIMS 14 -30, AND CLAIMS 3 AND 4, ARE IN PART IX.
APPENDIX

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IX.

APPENDIXPENDING CLAIMS 14-30 AND 3 AND 4

Claim 14. A method of using a finger pad shield placed in contact with the finger pad of a bowler's finger inserted into a finger hole of a bowling ball, to reduce the pressure on the finger pad when releasing said bowling ball from said bowler's finger and to improve a bowler's control over a direction or spin on a bowling ball, when lifting the bowling ball to impart spin and velocity, at release, comprising the steps of:

- a. placing a finger pad shield having a first surface, and a second surface opposed to said first surface, on a finger pad of a bowler, with said first surface in contact with said finger pad of a bowler and forming a contact area made between said finger pad of a bowler and said first surface of said finger pad shield;
- b. inserting said finger pad shield, in a finger hole of a bowling ball;
- c. said step b, of inserting said finger pad shield in said finger hole of a bowling ball, including the step of placing said second surface of said finger pad shield, in contact with an interior surface of said finger hole of a bowling ball;
- d. releasing said finger pad of a bowler and said finger pad shield from said finger hole of a bowling ball by applying a first force from said finger pad of a bowler in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball, to lift said bowling ball and producing a second force in a second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield;

e. said step d, of releasing said finger pad of a bowler and said finger pad shield from said finger hole of a bowling ball, includes the step of receiving said second force in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, through said finger pad shield to said first surface of said finger pad shield and over said contact area made between said finger pad of a bowler and said first surface of said finger pad shield; and

f. said step e, of receiving said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, includes the step of distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said finger pad of a bowler and said first surface of said finger pad shield, for reducing a pressure over said contact area made between said finger pad of a bowler and said first surface of said finger pad shield, produced by said second force, in a second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield.

Claim 15. The method of claim 14, wherein, said step d, of releasing said finger pad of a bowler and said finger pad shield from said finger hole of a bowling ball by applying a first force from said finger pad of a bowler in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball to, to lift said bowling ball, includes the step g, of applying a maximum natural force a bowler is capable of producing from said finger pad of a bowler, in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball, and producing said second force in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, and wherein said finger pad shield is rigid for distributing said second force in said second direction, from said interior surface of said finger

hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said finger pad of a bowler and said first surface of said finger pad shield.

Claim 3 (Amended) The method of claim 14, including the steps of: supporting said finger pad finger pad shield with a support made of a rigidly deflectable material which holds said finger pad shield in a stable position relative to said support ; and transferring the force of the bowling ball from said finger pad shield to said support to producing a counter force in said support for restoring said support to said stable position.

Claim 16 The method of claim 14, wherein said step f, of receiving said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, and distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure on said contact area, includes the step h, of distributing said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield over the widest area of said contact area for preventing pressure spots within said bowler's finger pad.

Claim 4 (Amended). The method of claim 1, including the step of controlling the depth of insertion of said finger pad shield in said finger hole of a bowling ball by engaging a raised surface connected to said finger pad shield and extending away from said finger pad shield, with the surface of said bowling ball to limit the depth of insertion of said finger pad shield into said bowling ball's finger hole of a bowling ball..

Claim 17. The method of Claim 14, wherein said step f, of receiving said second force in said

second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, and distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, produced by said second force, in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, includes the step i, of distributing said second force, in said second direction from said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure substantially within said contact area made between said bowler's finger pad and said first surface of said finger pad shield.

Claim 18. The method of Claim 14, wherein said step f, of receiving said second force in said second direction from said finger hole of a bowling ball, against said second surface of said finger pad shield, and distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure over said contact area, produced by said second force, in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, includes the step j, of distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, substantially uniformly.

Claim 19. The method of Claim 15, wherein, said step f, of receiving said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, and distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure on said contact area made between said bowler's finger pad and said first surface of said finger pad shield, produced by said second force, in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield. includes the step k, of distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure substantially within said contact area made between said bowler's finger pad and said first surface of said finger pad shield.

Claim 20 The method of Claim 15, wherein said step f, of receiving said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, and distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure on said contact area, produced by said second force, in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield. includes the step l, of distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said bowler's finger pad and said first surface of said finger pad shield, for reducing said pressure within said contact area made between said bowler's finger pad and said first surface of said finger pad shield, substantially uniformly..

Claim 21. A method of using a finger pad shield placed in contact with the finger pad of a bowler's middle finger inserted into a finger hole of a bowling ball, to reduce the pressure on the finger pad when releasing said bowling ball from said bowler's finger and to improve a bowler's control over a direction or spin on a bowling ball, when lifting the bowling ball to impart spin and velocity, at release, comprising the steps of:

- a. placing a finger pad shield having a first surface, and a second surface opposed to said first surface, on a finger pad of a middle finger of a bowler and forming a contact area made between said finger pad of a middle finger of a bowler and said first surface of said finger pad shield;
- b. inserting said finger pad shield, in a finger hole of a bowling ball;
- c. said step b, of inserting said finger pad shield in said finger hole of a bowling ball, including the step of placing said second surface of said finger pad shield, in contact with an interior surface of said finger hole of a bowling ball;
- d. releasing said finger pad shield from said finger hole of a bowling ball by applying a first force from said finger pad of a middle finger of a bowler, in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball, to lift said bowling ball, and producing a second force in a second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield; and
- e. said step d, of releasing said finger pad shield from said finger hole of a bowling ball, includes the step of receiving said second force in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield and through said finger pad shield to said first surface of said finger pad shield and

over said contact area made between said finger pad of a middle finger of a bowler and said first surface of said finger pad shield; and

f. said step e. of receiving said second force in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, includes the step of distributing said second force, in said second direction from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said finger pad of a middle finger of a bowler and said first surface of said finger pad shield, for reducing a pressure over said contact area made between said finger pad of a middle finger of a bowler and said first surface of said finger pad shield, produced by said second force, in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield.

Claim 22. The method of claim 21, wherein, said step d, of releasing said finger pad shield from said finger hole of a bowling ball by applying a first force from said finger pad of a middle finger of a bowler, in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball to, to lift said bowling ball, includes the step h. of applying a maximum natural force a bowler is capable of producing from said finger pad of a middle finger of a bowler, in a first direction against said first surface of said finger pad shield, through said finger pad shield to said second surface of said finger pad shield, against said interior surface of said finger hole of a bowling ball, and producing said second force in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, and wherein said finger pad shield is rigid for distributing said second force in said second direction, from said interior surface of said finger hole of a bowling ball, against said second surface of said finger pad shield, over said contact area made between said finger pad of a middle finger of a bowler and said first surface of said finger pad shield.

Claim 23. A method of using a finger pad shield placed in contact with the finger pad of a bowler's finger inserted into a finger hole of a bowling ball, to reduce the pressure on the finger pad when releasing said bowling ball from said bowler's finger and to improve a bowler's control over a direction or spin on a bowling ball, when lifting the bowling ball to impart spin and velocity, at release, comprising the steps of:

- a. placing a finger pad shield over a finger pad of a bowler, and forming a contact area;
- b. placing said finger pad shield in contact with an interior wall of a finger hole of a bowling ball;
- c. releasing said finger pad from said finger hole by applying a first force against said interior surface to lift said bowling ball and impart forward velocity to said bowling ball, and producing a second force from said interior surface against said finger pad shield;
- d. said step c, of releasing, includes the step of receiving said second force over said contact area and distributing said second force over said contact area.

Claim 24. The method of claim 23, wherein, said step c, of releasing, includes the step e, of applying a maximum natural force a bowler is capable of producing from said finger pad of a bowler, in a first direction against said interior surface to lift said bowling ball, and producing said second force, and wherein said finger pad shield is rigid for distributing said second force over said contact area.

Claim 25. The method of claim 23, wherein said step d, of receiving and distributing said second force over said contact area, includes the step f, of distributing said second force, over the widest area of said contact area for preventing pressure spots within said bowler's

finger pad.

Claim 26 .The method of claim 23, including the step g, of controlling the depth of insertion of said finger pad shield in said finger hole of a bowling ball by engaging a raised surface connected to said finger pad shield and extending away from said finger_pad shield, with the surface of said bowling ball to limit the depth of insertion of said finger pad shield into said finger hole of a bowling ball..

Claim 27. The method of Claim 23, wherein said step d, of receiving and distributing said second force over said contact area, includes the step h, of distributing said second force over said contact area for reducing said pressure substantially within said contact area.

Claim 28. The method of Claim 23, wherein said step d, of receiving and distributing said second force over said contact area, includes the step i, of distributing said second force over said contact area, substantially uniformly.

Claim 29. The method of Claim 24, wherein, said step d, of receiving and distributing said second force over said contact area includes the step j, of distributing said second force substantially within said contact area

Claim 30. The method of claim 24, wherein, said step d, of receiving and distributing said second force over said contact area includes the step k,, of distributing said second force over said contact area, substantially uniformly.